FURTHER PAPERS

RESPECTING THE

BRITISH CONSULAR JURISDICTION IN THE LEVANT.

(1.)—REPORT *from His Majesty's Consul-General at Constantinople, on the Consular Jurisdiction in the Levant.*

IN reporting the practice observed by me in judicial proceedings, it may be necessary occasionally to repeat, or observe upon passages of my former Report of October, 1825, and of the "Instructions" prepared by me in September, 1829, for the guidance of His Majesty's Consul at Smyrna.

The "Instructions" relate to jurisdiction in differences between British subjects; in those between British and foreign subjects not Ottoman; and finally between British and Ottoman subjects.

The same practice is probably observed in those matters at the several British consulates in the out-ports, but a different mode of proceeding has prevailed at Constantinople, in suits between British and foreign subjects, in consequence, perhaps, of the European governments not having established Consuls at Constantinople, with the exception of Great Britain, where the establishment of a Consul-General dates from the year 1805.

It would appear also that the Consuls at the out-ports are permitted to exercise greater authority in cases of differences with Ottoman subjects, than the legations can claim the exercise of here, the Russian legation excepted.

It may be supposed that the Ottoman authorities are naturally more jealous of their rights at the seat of government, than they may be in the provinces.

I shall therefore state the practice observed here in the three divisions of proceedings above stated.

The French and Venetians having made the first commercial establishments in Turkey, it is probable that the mode of proceeding in judicial affairs prevailing at the several consulates in Turkey, have been adopted in imitation of those prescribed by the French and Venetian governments, or, with some, have had a common origin in their analogy with the local commercial courts which existed in most of the ports of the Mediterranean, composed of merchants, who, during the exercise of their temporary functions, were designated Consuls.

A French Consul in Turkey is but the president of the court, and has no vote in its decisions, except when the two commissioners, whom he is authorized by the "ordonnances" of his government to select, differ in opinion; he has then the casting vote.

The practice of choosing assessors appears to have obtained, with some of the British Consuls, but as the charter does not invest with authority others than the Am-

bassadors and Consuls, and as the Levant Company had not delegated authority to assessors in their bye-laws, I considered it necessary to warn the Smyrna Consul in the "Instructions," that the judicial authority, as well as responsibility, were with the Consul, and not with the assessors, whom he might consider it necessary to call to his assistance.

It may be considered that the practice of proceeding in differences between suitors of different nations, upon the principle that the plaintiff should follow the court of the defendant, was generally observed at the consulates in the provinces, long before it was completely admitted at the capital.

There having been no Consuls here from the European governments, the Ambassadors or chiefs of the several legations who had to interfere for the settlement of differences between the subjects of their respective governments, encouraged a resort to arbitrations, or agreed in the nomination of mixed commissions, each legation naming an equal number of commissioners.

This practice partially prevailed until the year 1817, when the present mode of proceeding was adopted by the tacit consent of the several legations. The Russian legation was the first to propose a departure from mixed commissions, and in the year 1814 the French chargé d'affaires protested against the pretension of the Russian authority, with reference to a claim then existing, though the change effected in the year 1817 was proposed by the French Ambassador, the Marquis de Rivière.

It would have been preferable, perhaps, to have formed courts similar to those before alluded to, existing in France and Spain, consisting of merchants of different nations, presided by members of the several legations, holding weekly sittings, to hear and decide upon suits, according to some law framed or chosen for a common rule. But there is much reason to apprehend that the Russian legation would not have consented to an approach to any thing of the nature of a Hanse corporation.

In accordance with the principle now admitted in proceedings for the settlement of differences between subjects of different states, it is the national law of the defendant in the cause that governs, though it may probably be admitted that the English Consuls have sometimes found it necessary or convenient to assimilate their proceedings to those of their foreign colleagues, and may not always have decided according to English law.

The several factories, or assemblies of merchants settled in the ports of the Levant, having each preserved an immiscible character, appear to form so many distinct colonies, of which the chiefs of the legations at Constantinople may be considered the governors, and as the policy of some governments has induced them to direct their agents to assnme as much authority as possible from the stipulations existing with the Porte, the agents of other governments may also have been led to form an exaggerated estimate of their own authority.

The charter granted to the late Levant Company, giving authority to "*govern*," as well as to "administer full, speedy, and expedite justice" to the Company's trustees and agents in the Levant, the English Consuls may have inferred that their authority was equal to that exercised by their foreign colleagues.

Civil Jurisdiction.

Differences between persons subject exclusively to British jurisdiction.

In these differences I have generally proceeded in the manner recommended in the "Instructions" addressed to the Smyrna consulate.

In many cases I have urged the parties to submit their differences to arbitration, and in those which appeared more particularly to require that mode of settlement, I have occasionally, when it has been declined, named two assessors, one designated by each of the litigants, authorizing them to examine the claim set forth and to report thereon collectively or separately, in writing, or verbally at a subsequent meeting at which I presided, and decided on the case after hearing the parties with the assessors.

The Ionians often decline a reference to arbitration from apprehension of an improper exercise of the power granted to the umpire.

I have generally been assisted by assessors, always where the usage of trade was necessarily to be consulted, or where there was complication of accounts.

In cases of minor importance I have decided alone, by decree, after examining the documents presented and hearing the parties. Other cases I have of late referred to the Vice-Consul for amicable adjustment. Differences between masters of ships and their crews are naturally in his department.

In differences between *British* merchants I have generally addressed my opinion to them in epistolary form, which has always been conformed to. When they act for others under a power of attorney they would of course require for their own justification a positive decision or sentence.

My decisions have, in almost every case, been according to English law, according to the best of my judgment.

The questions which have required most attention have related to *claims on vessels*, and *masters of ships, protested bills, bankruptcies, attachments on property*, or *sequesters*.

The first, *claims against vessels*, has occasionally created much anxiety when it has been attempted to render the ship responsible for the acts of the master, and to detain

a vessel, arising from any doubts when the law anthorized an immediate recourse against it*.

Protested bills. The neglect or laches of the holders of bills, want of notice of protest, &c., have also required much consideration. Three years ago I had to decide in a case where much stress was laid on the absence of the necessity to give notice of protested bills to the drawers of them, and legal opinions were procured from London, but as it often happens, the case was differently stated by both parties, and not quite correctly by either. I decided for the necessity of the notice, and released the drawer from responsibility; my sentence was, I have reason to believe, submitted to the consideration of the gentleman consulted in London by the succumbing party, and though notice of appeal had been given, it was not pursued.

Experience has served to convince me that the necessity of giving "notice" should never have been dispensed with.

In bankruptcies, I have guided myself as far as circumstances would allow by the "Laws and Regulations for proceedings in matters of Bankruptcy," published in Malta, the 1st of November, 1815. I have considered myself the de facto commissioner, and having appointed provisional trustees, in due time assignees have been chosen by the creditors.

Compositions have generally been effected, otherwise I have given a release to the bankrupt on receiving a certificate containing the requisite number of signatures with amount of debt, attending latterly, in that respect, to the 122nd section of the Consolidating Bankrupt Act.

In failures of shopkeepers or other small traders, provisional trustees have been dispensed with. The property having been taken care of by the Cancelleria at the request of the creditors, has been made over under an inventory to the assignees afterwards named by them.

Sequesters are permitted by the foreign authorities here with too much facility, on the consideration that if the claimant give security for the amount sequestered, the person in whose hands he attaches property may consider the attachment binding.

When an attachment is notified I consider myself called upon to communicate the demand to the third party, and wait for an application from one of the parties before I interfere to confirm or dissolve the sequester.

When application is made to confirm a sequester I have found it expedient to regulate my proceedings rather by French than by English law.

In England a creditor appears to have greater facilities for seizing the person than the property of his debtor. The French law facilitates the latter mode of proceeding, which various considerations recommend for adoption in this country. The want of proper places to serve as prisons, the inhumanity of placing debtors in Turkish prisons in seasons of plague, and the expense attending arrests at their houses, when that mode would be feasible, need only be mentioned.

I know not if there is any English treasise on the subject of attachments of property, or sequesters, but I have not met with any authority for them before a judgment has been obtained against the debtor, when a seizure in execution may, I believe, be resorted to.

By the French code "saisies-arrêts ou oppositions," may precede the "saisies-exécutions."

A creditor on presenting a title in proof of debt to the judge of the district, or on satisfying him of the existence of a claim, can obtain an attachment in property equal to the amount of it, and after judgment is given, claim execution of it on the arrested property.

I have considered that after a summary examination of a claim and being satisfied that a debt existed, I might authorize a sequester on property to the amount of it, though I was not prepared to give immediate judgment on the claim.

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* Claims are often made against the former, for which the claimant pretends to hold his vessel responsible; for *non-delivery of goods shipped, loss from bad stowage of goods, running foul of other vessels and causing damage, debts for account of the vessel, deviation from the course of the voyage, &c.*

Vessels are also directly proceeded against for debts on *Bottomry Bonds*, but claims of this nature have very seldom been presented against English vessels. In all the claims above described, the arrest of the vessel has been applied for.

Ionian vessels and those belonging to the island of Malta, are frequently subject to claims for debt.

The Ionian Navigation Act allows the owner to mortgage his vessel, and directs him to cause a register to be kept on board, in which are entered the particulars of the sums borrowed. The register serves to prove the privilege of the first mortgagee to priority of payment, on the sale of the vessel; that privilege is, however, subordinate to those accorded to sums advanced for absolute wants in securing the safety of the vessel in the last voyage.

As there have been generally foreign claimants in these cases, they have consequently been almost always submitted to commissions, which have been guided by the French code in settling the distribution of the proceeds of the sale among the creditors, according to the different degrees of privilege.

The vessel having been previously arrested, on the demand of a creditor, has been sold, when the debt was not satisfied, at public auction, under my decree.

If a vessel were to cause damage to another at sea, in the Archipelago, or the Black Sea, a complaint would be lodged on their arrival here by one or both of the masters.

In cases of this kind, where there has been a cargo on board the vessel, and that it was in transit through this channel to another port, I have refused to interfere, further than to note on the ship's papers that there was a claim against it, stating its nature.

Independent of the considerations already stated, it may be acknowledged to be necessary to allow such facilities in a place where there is constantly a number of persons engaged in commercial transactions who are not permanently fixed or established.

Differences between *Partners* I have strongly insisted on referring to arbitration.

Suits between British and Foreign Subjects, not Ottoman.

Differences between British and other European subjects are invariably submitted to commissions composed of merchants and appointed by the protecting authority of the defendant in the suit.

That of the plaintiff designates one commissioner, who is accepted and named with two commissioners chosen by the presiding authority.

Well-founded objections against them from either of the parties are attended to.

When there are claimants of different nations, which frequently happens in suits regarding vessels sold for the benefit of creditors and the payment of bottomry bonds, one or more commissioners are added to represent the most important of the additional claims when it can be conveniently effected.

In bankruptcy cases if the foreign creditor were not to admit my decision as commissioner on his claim, I consider that he might apply for the appointment of a commission to try it.

A majority of votes decides. The dissenting commissioners may state in the sentence their opinion.

The sentences of commissioners are decreed for execution by the authority which appointed the commissioners.

These commissioners, (British) being courts of first instance, the appointment has been decreed by me.

In British commissions, that is say, when the defendant being a British subject, the commissioners have been named by the British authority, as some of them are frequently foreigners, particularly when the defendant is an Ionian, and then all may be so, it is not to be expected that their decision will always be in conformity to English law or practice.

I have nevertheless considered myself bound to decree the execution of the sentence; if it were appealed against, it would necessarily be reformed by English law.

Commissions are appointed upon a request from the plaintiff to that effect communicated through the channel of his own protecting authority.

The Porte having allowed the exercise of jurisdiction in such cases by the different legations, the British authorities have considered themselves competent upon that request to assume it.

This practice commenced long before the dissolution of the Levant Company, and has continued to be observed.

Differences between British and Ottoman Subjects.

The 24th Article of the Capitulations relates to lawsuits between British and Ottoman subjects, and provides for the intervention of the Ambassador or Consul at the trial, though it does not appear to convey to them the right of participating in the decision, which the 42nd Article does in criminal cases.

The English party has always the assistance, on such occasions, of one of the interpreters of His Majesty's embassy, who represents the Ambassador or the Consul.

The Mussulman law governs all the subjects of the Sultan indiscriminately in differences between each other, and whatever degree of authority may be granted to the heads of the different Christian communities existing in the empire over the members of them, their decisions and those of their delegates may be successfully resisted by appeal to the Mahometan law.

The Greek may cite his fellow Greek to the Mehkemé in opposition to a decision of the Patriarchate in civil suits.

The Capitulations allow to British subjects the right of claiming to be judged at the Court of the Grand Vizir, where it is supposed that the influence of the Ambassador may guard him against the effects of the venal practices to which he might be exposed in the lower courts.

The late Levant Company attempted to procure some additional articles to the Capitulations to provide for settlement, by arbitration, of differences in commercial matters between British and Ottoman subjects. Sir Robert Liston was authorized by His Majesty's Government, in the year 1819, to assist in obtaining the concession, and I was directed by the Company to defray the charge for presents that it might have been considered proper to make to the Ottoman Ministers on the occasion. But the Ottoman Ministers stated, unequivocally, the impossibility of acceding to the proposal.

A mode of proceeding in such matters had previously commenced, which has since been much observed, that, however imperfect in itself and open to objections, has served to place the settlement of commercial differences, to a certain degree, in the hands of the commercial body.

The Porte refers commercial differences to the examination of the head "*Doganier*." The proceedings are as follows:—

The head customer collects a number of merchants of different nations, who meet at his office on a fixed day, when they hear the parties in the cause, appointing a second day for a final hearing of it if necessary.

An "*Ilam*" or report is then transmitted to the Porte by the Doganier, which is supposed to contain the opinion or decision of the majority of the assembled merchants.

These opinions are understood to be according to commercial law and usage, and as the French commercial code is more generally consulted by foreign merchants, its rules may be considered as being observed on such occasions.

When the Doganier's "*Ilam*" has been communicated to the Frank party, it has occasionally been found to represent incorrectly the opinions of the merchants, and at the same time to contain representations of his own condemnatory of the Frank.

Here lies the imperfection of the proceeding at the Doganier's court, to obviate which as much as possible the Frank merchants have of late stated in writing their opinions, to which the respectable Ottoman Christian merchants have subscribed, when there was no apprehension of the Turkish President, the Doganier, being displeased at their acquiescence.

This decision or opinion is generally submitted to, but there is no doubt that a Mussulman might at first refuse to appear before the Doganier, and could always appeal from his "*Ilam*" to the *Law*.

It has happened that Ottoman Christians have been permitted to carry their appeal against it to the Grand Vizir's court, where, however, it might generally be expected that the "*Ilam*" would be confirmed.

English subjects might also appeal from it in virtue of the 24th Article of the Capitulations, which allows them access to the Grand Vizir's court, and is part of their law.

The British authorities would be applied to for enforcing execution of the "*Ilam*," and they would feel themselves bound to support the appeal. Such appeals have not occurred, probably from the prevailing conviction that the "*Ilam*" would be confirmed by the Vizir.

After that confirmation the British authorities would have no cause for objecting to the decision, and if they did not execute it the Ottoman authorities would.

Appeal.

At Constantinople eight days is the shortest term allowed by the foreign authorities for giving notice of appeal. I have considered that if the appeal was not intimated on the 14th day after the communication of the sentence, I was authorized to proceed to the final execution of it. In case of appeal a provisional execution has always been required.

In appeals from consular decisions I have confirmed or reformed them, sometimes with, oftener without, assessors, both in suits exclusively British and mixed suits. As the appeals to France and Russia in mixed suits admit of no intervention on the part of the protecting authority of the foreign appellant or appellee, I have considered we might also proceed exclusively in them.

In appeals against my own sentences or decrees, I defend them by explaining in a more detailed manner the considerations declared in the sentence, and by exposing the errors of the appellant's objections when they exist. His Excellency the Ambassador then decides according to his own judgment.

Appeals from the decisions of French, Russian, Sardinian, and some other commissions are carried to courts in those countries.

The Austrian legation names a commission of revision, after which a commission of appeal may I believe be applied for. That legation has not yet published the rule by which it is guided in appeals.

In appeals from British commissions, two new members are added to the commission which is authorized to examine and *report*, not to *decide*, upon the objections of the appellant. I examine the report and submit my own opinion on the appeal to the Ambassador, who then decides thereon.

Execution of Sentence.

It has already been stated that sentences, though appealed from, must be provisionally executed. They have been executed in the manner recommended in the "Instructions" addressed to the Smyrna consulate, by deposit of the amount, satisfactory security, or arrest of debtor: recourse to the latter mode has very rarely been found necessary.

When sentences in appeal from my decisions in first instance are notified, I direct the execution of them. When attachments, or deposits of property, have been effected during the suits, I order execution upon them. It has very seldom been necessary to arrest debtors: when it has occurred, the obstinate and ill-intentioned debtor has soon relented, and the creditor, when he has been satisfied of the poverty of his debtor, has consented to his release to avoid the expense of imprisonment.

From the preceding statement it will appear that the Levant Consuls have exercised authority in the several matters referred to them, and it may be added that the interests of the King's subjects, residing or frequenting the ports of Turkey, require that they should so interfere, in order to avoid the inconvenience and injury which would result from an appeal to the tribunals of the country.

The charter granted to the late Levant Company appears to provide only for the settlement of differences between "merchants" of the Company and others (merchants?) not of the Company in "plaints begun and to be begun" at the places indicated, and allows also the Consuls to exercise lawful authority in "all and all manner of questions, "discords, and strifes among them," and to execute all things prescribed and appointed by the Company, &c.

The Consuls have, however, exercised authority beyond those limits, considering, perhaps, that they were competent to proceed in jurisdiction so far as the Turkish capitulations permitted them.

They have judged in questions, originating in other countries, not in Turkey, between the King's subjects, not merchants, and between British and foreign subjects; they are expected to supply the place of all our courts of law; claims which in England would appertain exclusively to the Court of Admiralty, may be brought before them. As the agents in the Levant of some governments appear to have an extreme authority, equal to the cognizance of suits of every kind, an equivalent exercise of authority is expected in return from others.

The necessity of defining and fixing the extent of the authority of our Consuls is manifest.

A code of procedure, or fixed rules for proceedings, is, no doubt, requisite, but it may also be useful to do something to facilitate their interpretation of the law, for it is to be apprehended that their intended decisions in equity have sometimes been contrary to law.

The various English treatises on parts of commercial law, are not so intelligible to the common reader, as to the legal student. French Consuls have facilities in this respect, from the classification of their national codes.

If it might not be practicable to draw up a set of rules similar to the articles of the French code, in accordance with English law, for application to all cases, a brief and familiar compendium of commercial law would assist the Consuls in applying those rules which might be made, and in their reference to the works published on the several parts of law, which are often perplexing, from the quotations of opposite decisions of our Judges, without always stating that which has overruled. Those treatises are in the hands of most of our merchants. Legal opinions are, as before stated, applied for to England, and even foreign practitioners here sometimes quote from Chitty and other writers.

I have purposely adverted to the law of bills of exchange, with reference to "notices of protests," in which it is desirable that a positive rule were prescribed. The same observation may apply to other questions in which it might be useful to limit the law by rules.

I consider that in *bankruptcies*, "the laws for regulating, &c.," published in Malta, to which I have alluded, might with some curtailments and changes, perhaps called for by the new Act, (Consolidating Bankrupt Act,) be rendered applicable to the Levant, leaving to the Consuls the means of dispensing with the nomination of provisional trustees, when, in failures of little importance, it may appear convenient to proceed at once to the election of assignees. The Consul, through the Cancellier, might place under seal, in all cases, the property of the bankrupt, to be made over to the provisional trustees, or to the assignees, as it might be.

The Consul would have to declare the failure, on a petition from creditors, after examination of the statement. The 4th chapter of the regulations might be his rule, in relation to transfers of property after an act of bankruptcy.

Arbitrations.—It is desirable that the mode of proceeding of the umpire were precisely fixed; some of the rules of the French code might be adopted.

In partnership concerns, arbitration is certainly the most desirable mode of settling differences between the partners. The French code renders it obligatory. It is not perhaps to be apprehended that arbitration would often be declined by the partners. If it should happen, the Consul might be authorized to name two commissioners, reserving the casting vote to himself, if a difference existed between them. The sentence might be without appeal. The commissioners might appoint persons to elucidate accounts of the partnership, the charge for them to be defrayed by the party declining submission to arbitration.

Sequesters.—The authority granted by the French code, "Saisies-arrêts ou oppositions," might be usefully extended to the Levant Consuls, who might be empowered to authorize attachments, after the exhibition of a proof of debt, or on the shewing of a well-founded claim, when the person against whom it exists is not a fixed resident; the amount to be attached to be fixed by the Consul in both cases.

Stoppage in transitu.—It is desirable that "constructive possession" were well defined, or limited by some rules. The articles of the French code, under the head, "Revendication," might be rendered adaptable to the Levant, placing those affecting property in the possession of bankrupts in accordance with the regulations to be made in cases of bankruptcy.

Claims against Vessels.—The practice observed here in these cases has been stated, and it may be considered that many of the articles of the French commercial code, under the heads "Navires et Batimens," and "de la Saisie et Vente des Navires," might be usefully applied to the Levant.

Proceedings in Consular Courts.

It may be useful to fix rules for as speedy a termination of the suits as can be effected consistently with the ends of justice, but much must be left to the Consul in that respect.

The Consuls might be authorized to decide summarily in claims of small amount, after the hearing of the parties; on a consideration of the value of money, the sum might not exceed 5*l.* sterling.

It is proposed, that after the first memorial is presented by the claimant, each party may produce two, before the Consul can be competent to declare the pleading closed. The Consul may afterwards, so soon as he considers it convenient, call upon the plaintiff to produce his final statement, to be communicated to the defendant, whose reply thereto would be communicated to his adversary.

The Consuls may be authorized to fix in their courts the delay allowed for answering to writings during the pleadings, observing the most convenient term used at his place of residence by other Consuls. It may be difficult to establish a general rule in this respect applicable to every consulate.

There is no fixed rule in this consulate, but the suitors are given to consider that they must present their answers as early as possible; and there is perhaps less delay than in other courts, where the suitor, considering that he may defer his reply until the expiration of the prescribed term, generally waits for it.

Consuls might have authority to issue a subpœna to witnesses, and fines for not appearing might be fixed. It may perhaps be expected that none but turbulent Englishmen would object to appear when requested. Ionians have sometimes objected, from religious scruples, which have been satisfied by a priest of their own church, before whom the oath is generally administered. Ignorant Ionians often consider that making an oath is offending against the commandments.

After receiving the memorials closing the pleading, the Consul should fix an early day for hearing the parties, and deciding between them.

Assessors.—It would perhaps produce inconvenience, if the character of judge or Consul were given to them. I do not consider that our merchants would desire to be judged by each other. The practice of the French consular courts has not served to induce them to wish for a change in the mode of proceeding.

According to the present practice of this consulate, they are not judges nor jurors, for they have no vote. Their assistance and advice are applied for when the Consul may consider that their experience in the usage of trade may be useful; their attendance is voluntary and gratuitous; if it were rendered compulsory, remuneration would be expected. It may be advisable to let it remain as it is, voluntary. A respected Consul will always find the respectable members of the mercantile community over which he presides, willing to assist him.

Appeal.—The "Report" of October, 1825, and the "Instructions" of 1829, treat on appeals. With reference to the Report of 1825, the 9th paragraph appears to require explanation. The Vice-Consuls or agents therein alluded to, are those who are in the immediate neighbourhood of the Consul, some of whom are appointed by him as agents; Mitilene, Scala Nova, Samos, Scio, were more particularly referred to, who ought to report to the Consul at Smyrna, the progress of their proceedings in suits or differences which are not of a trifling nature, so that the Consul might advise and direct them in their proceedings; and in cases of great importance, stranding of vessels, &c., proceed in person to superintend them, if it appeared necessary. Their execution of decisions should be strictly provisional. The term of fourteen days might be allowed for giving notice of appeal, and another term, according to the distance of the parties from the court of appeal, for prosecuting it, which need not exceed two months for Turkey. A longer term should be allowed in claims from England, in which the claimant is represented by an agent, who might give notice of appeal in the usual time, and wait for authority from his principal to prosecute it; four months might then be allowed.

The Consuls have occasionally made interlocutory decrees on incidents of the suit, during the pleadings, and it has been expected that they should not be appealed from until the definitive judgment was given. When such decrees are preparatory, or are of a conservative nature, those ordering surveys of property, and the sale of that which is of a perishable nature, they need not be subject to appeal, nor would such an appeal be entertained. But interlocutory decrees on incidents of the suit may often serve to prejudge the principal matter of it. Such decrees might be subject to appeal, and I do not consider that the progress of the suit need always be retarded by the appeal on the incident.

Execution of Sentence.—Former reports relate to provisional execution of the sentence in first instance, and the practice observed here in executing those of first and second instance, has been stated.

In France there is no appeal from the sentence of a commercial court, when the

principal claimed is not above one thousand francs. This rule might be observed at the principal consulates, but perhaps not at all. The Consul might, in such suits, proceed more summarily than in those of greater importance, and thereby prevent the costs becoming excessive. Investing the Consuls with greater authority against the property of debtors, would tend much to obviate the necessity of arresting their persons.

If there was no appearance of fraud in the conduct of the debtor, the expenses of his imprisonment should always be at the charge of the prosecutor, and a release subsequently granted under some well explained provisions of the Insolvent Act, if the creditor did not in the mean time compound with his debtor.

As the Ionians who resort to the Levant for the purposes of trade are generally possessed of property in their islands, which is out of the reach of Levant courts, some understanding might possibly be effected with the Ionian government for facilitating a recourse against it to creditors in virtue of Levant consular decisions.

Criminal Jurisdiction.

The 42nd Article of the Capitulations grants to the Ambassador and Consuls the right of interference when British subjects are tried for criminal offences, and to "*hear and decide*" together with the Turkish judge.

The 10th Article establishes the right of the Ambassador to decide in cases of calumny.

Both articles relate, no doubt, to causes in which the accusers are Ottoman subjects, for though there be no article in our Capitulations respecting criminal acts committed by British subjects against each other, yet as the French and Russian treaties clearly provide for such cases, and for the exercise of jurisdiction therein by their Ambassadors and Consuls, the privilege has been considered common to the several legations accredited at the Porte, and criminal accusations from subjects of the European governments are submitted to the protecting authority of the accused party, according to the principle observed in civil jurisdiction, but there is not, in the examination of the complaint, any intervention on the part of the protecting authority of the accuser.

The Consuls at the outports have also had to interfere in criminal cases when the accusing party has been Ottoman, as well as in those where the parties were British, or British subjects and those of other European governments.

The Consuls appear to exercise, at present, a greater degree of authority in police over the subjects of their respective governments, than is allowed to the foreign authorities at the capital, the Russian legation always excepted.

The Porte first made objections to the interference of the legations in police matters in the year 1818 and 1819, upon the occasion of an arrest which was effected by the French and British authorities, collectively, of a band of thieves and vagabonds of various nations, concerning whose proceedings information had been given to the French embassy. The Russian legation having protested strongly against the pretensions there set forth by the Porte, and all the other legations having remonstrated in more moderate terms, the foreign authorities continued to proceed unmolested as they had before done.

When the accusers were not Ottoman the case was left exclusively to the foreign authorities which it concerned, the Turkish police officers always assisting them in their proceedings when applied to, and permitting the arrested persons to be lodged in their prisons.

When Franks were arrested on the accusation of Ottoman subjects, notice of the arrest was immediately given to their protecting authorities, to whom the accused persons, when claimed, were delivered up, on an understanding that they would be forthcoming for trial, at which the interpreters assisted to represent the chiefs of the protecting legations.

Soon after the publication of the treaty of Adrianople, the Porte published police regulations, and I believe communicated them to the several legations, with the exception it may be supposed of that of Russia, for as they were declared to be generally applicable, the declaration would have been considered a contravention of the 7th Article of that treaty, which places Russian subjects under the exclusive jurisdiction of their Minister and Consuls.

I know not if any notice was taken of the notification by the several foreign ministers. It is probable that the Porte was left to suppose, from their silence, that the regulations were not considered by them as applicable to foreign subjects, unless they were enforced in conjunction with their protecting authorities.

The Porte has, however, proceeded gradually to establish an almost exclusive exercise of police in matters regarding foreign subjects not Russian, and it may be added that the manner in which the Turkish authorities have proceeded on most occasions has tended to justify with the public the exaction by Russia of the extent of jurisdiction stipulated in the treaty of Adrianople.

The practice formerly observed with the British authorities in matters of police is no longer attended to, and we cannot be said to be in the full enjoyment of the privilege conferred by the 42nd Article of the Capitulations.

It would be endless to state the various instances which might be mentioned of the

irregular proceedings of the Turkish authorities in this respect. It may be only necessary to specify some of the most flagrant.

In the month of February, 1834, an Ionian, accused by an Austrian subject of having in his possession property stolen from him, was, on his application, arrested by a police officer and lodged in a Turkish prison. The Austrian then stated the case to me, and on sending to claim the arrested Ionian, the transfer of him to the consulate was refused, nor was he surrendered to the British dragoman until after a summary examination of the case by the Capitan Pasha, by whose order the bastinado was inflicted with such severity, that the Ionian remained lame for several weeks. In this case the Pasha had no jurisdiction, for the parties were foreigners. If he considered that he had jurisdiction, he should have attended to the 42nd Article of the Capitulations. The dragoman was not present at the examination, and he did not know that the prisoner had been punished until he was delivered over to him.

In the month of July following, two natives of Malta, father and son, of the name of Damata, were arrested and lodged in the prison of the Seraskier Pasha, on suspicion of having been concerned in robbing a Greek church. No notice was given by the Pasha to the British authorities of their imprisonment, but the men found means, after some days' detention, to make known their situation. It appeared that Damata and his son had been bastinadoed to extort confession, but they persisted in asserting their innocence;—their liberation was not obtained until some weeks afterwards. There was no doubt of their innocence.

In the month of August last, an Ionian captain having been insulted by some Turkish soldiers at a village on the Bosphorus, he caused one of them to be arrested by the police guards, who having taken him to the station, both parties were sent by the commanding officer to the habitation of the Achmet Pasha, who commanded in that district of the Bosphorus, by whose kehaya, or agent, the complaint was examined. The soldier confessed that he had maltreated the Ionian, but stated in his own justification, that language had been addressed to him, which, as a Mussulman, he was bound to resent. The Ionian was bastinadoed by order of the kehaya, though he declared that he was a British protected person. Upon enquiry it resulted that not the least blame was imputable to the Ionian, who is known as a peaceable person, and is generally respected. He never obtained any degree of satisfaction for the ill-treatment he complained of.

It appears, therefore, that while the Russian legation has an extended exercise of jurisdiction, the Porte is endeavouring to deprive the other legations of the enjoyment of those more moderate rights which were granted by ancient treaties.

A natural consequence of depriving them of such privileges will be the increase of Russian dependants in the Levant.

My interference in such cases may now be considered as limited to remonstrating against the irregular proceedings of the Turkish authorities.

In cases which have been brought before me, I have always reported the most important of them to His Majesty's embassy, and have acted upon its advice or instructions regarding them.

When an accusation is laid, I either send the parties to the Cancelleria for their depositions to be taken, or I interrogate them myself. I have always done so in cases which were to be submitted to the Ambassador, to whom I transmit, on such occasions, the depositions and interrogatories, explaining thereon, and submitting suggestions for the disposal of the case, as I do also in cases transmitted from the consulate. Grave cases have not been frequent. One occurred about two years ago, when a native of Malta was accused of having committed a robbery in one of the Roman Catholic churches of Pera, under Austrian protection; it was the second time that he was brought before me for robbing in churches. On the last occasion the evidence was strong against him, and he was, moreover, a man of bad character, having no known means of supporting himself. He was imprisoned for twelve months in the Bagnio, at the expiration of which term he was released, and he was warned that he would be left to the rigour of Turkish law on any future accusation.

A short time ago three Ionians were arrested at Smyrna, on an accusation of barratry, committed three years ago. The principal of them was the owner and master of an Ionian vessel, that arrived here in the year 1832, from a port of Syria, which it was stated had been plundered, during the voyage, by the crew of a pirate boat, of sundry bags of money and bales of goods, shipped on board the vessel at Beirout.

The consignees of the money suspecting the truth of the captain's statement, requested that the crew should be examined respecting the circumstances of the voyage, which was done, but nothing was elicited to authorize proceedings against the captain. Two Ionian boatmen settled at Smyrna, having lately declared that the missing bales were carried to Smyrna in their boat from the Ionian vessel with the knowledge of the captain, he, his son, and another Ionian were arrested by order of Mr. Consul Brant, who having transmitted to me the depositions relating to the accusation, they were submitted to the consideration of the Ambassador, and his Excellency authorized the transfer to Corfu of the three Ionians for trial. The two boatmen have been sent with them.

In cases of *assaults*, as the aggressor has generally been arrested by the local police at the request of the complainant, a compromise has often been made between the parties, before my examination of the case was completed; and I have, on many occasions, recommended to the accused party to conciliate his accuser.

Certain cases which might, perhaps, strictly be termed robberies, I have considered as *undue appropriations* of property, and have treated them as civil actions.

Persons against whom other petty offences have been proved, have been punished by imprisonment for a short time, according to the nature of the offence. Since the destruction by fire of the building contiguous to the British palace, which served for a prison, this mode of punishment has seldom been resorted to, in order to avoid the necessity of making use of Turkish prisons.

Drunken sailors have often been arrested by the Turkish police guards, and I have authorized their detention until they were able to return peaceably to their ships.

I have also authorized a short imprisonment of turbulent seamen on complaints from their captains.

Feeling that the Consuls do not possess the requisite authority in criminal cases, I have, as it may be naturally expected, deemed it prudent to use power with as much moderation as possible, but I have considered it necessary not to allow offences to pass unnoticed, for experience has shown that the certainty of punishment, though slight, serves much to deter from a repetition of them.

That the Consuls should have a degree of authority granted to them for the cognizance of certain offences, and for their interference in others, appears to be absolutely necessary. The want of it is becoming more felt by them in consequence of the increasing resort to the Levant of the lowest classes of natives of the Ionian islands and Malta.

The same cause has, no doubt, occasioned an increase of official care to the Consuls of other nations.

It is much to be regretted that criminal cases of every kind could not be referred to Turkish courts, with the intervention of the foreign protecting authorities, according to tenor of the 42nd Article of the British Capitulations; but experience has unfortunately proved how little the Turkish authorities are to be confided in for a due observance of such stipulations, or for a moderate exercise of their own power where Christians are implicated. Russia might not, it may be apprehended, consent to such a compromise with her own exclusive rights, and if the arrangement were not general, it might be inexpedient, for other considerations, to adopt it.

It may therefore be considered necessary, for the present, that authority be given to the Consuls:—

To take cognizance of small offences and misdemeanors, and to punish the offenders by fine or imprisonment:

To send away from their districts to Malta or the Ionian islands, perverse offenders and vagabonds not having any apparent occupation or means of subsistence, unless they give satisfactory security for their future good conduct. To send to those islands persons accused of grave offences when the Consul is satisfied that guilt attaches to the accused party, making it incumbent on the Governments of the islands to which the prisoner may belong, to provide for the passage and expenses of witnesses to assist at his trial.

Those Governments might possibly be thereby induced to adopt measures for recalling from the Levant the numerous vagabonds who are now infesting the sea-ports of Turkey.

The consent of the Ambassador for the removal to Malta or Corfu of persons accused of grave crimes, should be applied for by the Consuls of Turkey. Those of Egypt and Syria, would represent the cases to His Majesty's Agent and Consul-General.

Constantinople, 23*rd December*, 1835.

(Signed) JOHN CARTWRIGHT,
CONSUL-GENERAL.

(2.)—LETTER *from the Secretary to the late Levant Company to Viscount Palmerston, on Consular Jurisdiction in the Levant.*

Torrington, Devon, December 5, 1835.

MY LORD,

In compliance with your Lordship's desire, conveyed to me by Mr. Fox Strangways, that I should forward to your Lordship any suggestions that I may have to offer as to what may be most expedient to be done for the better regulation and definition of the Civil and Criminal Jurisdiction of His Majesty's Consuls in the Levant, bearing in mind the probable effects of the surrender of the Levant Company's charter,—I have the honour to submit such opinions as are the result of the best consideration which I have been able to give to the subject.

Having for many years been the secretary of the Company, even down to the moment of its dissolution, I am aware that much more of useful suggestion may be expected from me than I am able to offer. Therefore, I pray your Lordship, in kindness, to consider, that during my time, I might say during the Company's time, not a tithe of the difficulties now presented, from the Levant, for your Lordship's notice, were presented for that of the Company.

And that, ever since the surrender of the charter, I have been retired from London, and from all connection with Turkey.

I doubt not that things are much changed.

Formerly, in the best days of the trade, I mean when, being in the hands of a few opulent merchants, it was not over-done, goods were sold, in compliance with standing orders of the Company, for ready money only, in Turkey, by the "Factors,"

who not being allowed to trade on their own account, were, literally, the servants of their principals at home: hence disputes were not heard of, and formal applications for consular interference must have been of most rare occurrence. Latterly, even British subjects settled in Turkey, being members of the Company, and sworn to be governed by its regulations,—I may add, knowing something more or less of what they were about, and of the difficulties they had to struggle with,—were so orderly, and so fortunate, that the legality of the power vested in the Consuls, acting as judges, to "fine," "imprison," and "send home," was never put to the test.

Now, every body goes to the Levant, and any body, so disposed, may, as it should seem, do wrong with impunity; a state of uncertainty which ought not to be permitted to continue.

I submit that the whole matter may be disposed of under these two heads,

Consular Jurisdiction.

Consular Instructions.

The draft of the Bill to be laid before Parliament proposes to enable His Majesty to make regulations touching the authority of the Consuls over British subjects. So far well: but might it not most usefully go further? I mean further than your Lordship (having the doubts of the law officers in view) may have thought that those regulations should go. And might it not, in order to obviate unnecessary alarm and discussion, be entitled a Bill to *Remove Doubts, &c.*, and among other things enact, that in consideration of the peculiar character of the people and government of Turkey and Egypt, which at all times has rendered it impossible to apply to their courts of justice for the decision of disputes arising between British subjects, His Majesty's Consuls be, when called upon, authorized to act as judges, as hitherto supposed to be, and in execution of their sentences, proceed to fine, imprison, or send home in custody such defaulters and delinquents as they may have had to deal with.

Limits to fines and imprisonment might be fixed.

An appeal to English law at Malta, from consular decisions in the Levant, as suggested by Consul-General Campbell, might be provided for.

Without unquestionable authority to enforce, the Consul cannot act usefully as a judge. He had better be quite silent.

But with such authority, published with the solemnity of an Act of Parliament, to those most likely to be restrained by it, I doubt not that he would be more rarely called upon to act judicially, inasmuch as litigious and fraudulent debtors, finding themselves, even in Turkey, to be within the reach of justice, might come into early, quiet submission.

Indeed, my Lord, there is no fact of which I am more convinced than this, that if you would make the best possible provision for the security, present and future, of British property in the Levant against the frauds of British swindlers, and prevent Turkey from becoming a sanctuary, not only for them, but for runaways of the like character from Britain, *you must strengthen the hands of your Consuls.*

Thus much for Civil jurisdiction. Criminal jurisdiction would need hardly to be noticed, if, as formerly, we were wholly British; but since the Maltese have become our fellow subjects, and the Ionians been protected as such, we have become, not unfrequently, *murderers* in Turkey, to the disgrace of our national character in the estimation of the people of the country. Effectual measures ought to be attempted for the purpose of restraining the ferocity of those people.

Some flagrant instances of murder, with impunity, have been reported to your Lordship.

Sir Robert Liston, on his return from his embassy in 1822, mentioned one, doubly atrocious, to me. He was very urgent with us to move His Majesty's Government on the subject. The late Lord Londonderry was spoken with; he perceived difficulties which he could not see his way through; he showed no inclination to stir; he did nothing.

Consular Instructions.

The grand desideratum of the Consuls, by which they hope to be directed in all possible cases, and to be shielded from responsibility.

Nevertheless, I would postpone the issue, even with the mass of suggestions in hand, which the gentlemen, whose opinion have been asked, will furnish.

My Lord, I cannot but look back to the administration of the Company, which was as simple as it was quiet, and of long duration. Knowing the impossibility of providing for every contingency, it never gave detailed codes of instructions; its policy was to avoid doing so; satisfied with a few plain, general rules, it left the application to the discretion and integrity of the Consuls; on their responsibility, which the Company considered the best security for the temperate administration of justice.

But I am told that the present times are not like those to which I have alluded. I admit they are not, and yet I cannot perceive any other material difference bearing upon this part of the question, than that the Consuls are more frequently called upon to act now, than formerly.

After all, my Lord, you need only legislate for extreme cases, probably even in these times, of rare occurrence, the Consul's every-day court, being, as Vice-Consul Brant very properly terms it, one of conciliation, rather than of formal justice.

But if your Lordship thinks there must be a code of instructions, without any hesitation I advise that Consul-General Cartwright be directed to consult all the foreign codes in use at Constantinople, and then to prepare and forward a draft of one adapted to our occasions, for your Lordship's consideration. In my opinion he is, beyond all comparison, the best qualified man that could any where be found for the execution of that duty.

In the mean time, not neglecting the Act of Parliament, which I would charge with all the graver matter, I would direct the old instructions and bye-laws of the Company, excepting of course such as become extinct with it, I should rather say except such as only related to the concerns of the corporation-consulages, treasurers, &c., to be the rule for the present. They are the rule, I perceive, but I think such direction would encourage the Consuls.

Thus it is that I would dispose of the whole matter.

I have the honour to be, with respect,

My Lord,

Your Lordship's most obedient, humble servant,

(Signed) GEORGE LIDDELL.

To the Right Honourable
The Viscount Palmerston, &c. &c. &c.

(3.)—LETTER *from Turkey Merchants on the Consular Jurisdiction in the Levant.*

London, 29th January, 1836.

My Lord,

We have carefully perused the documents submitted to us by your Lordship, respecting the powers exercised by British Consuls in the Levant.

In appears to us that the practice and defects of the present system have been ably developed in the several reports of the Consuls, who have judiciously adverted at the same time to the practice of other nations in the Levant, the like privileges being conceded by the Porte to all European States connected with Turkey by treaty. We have attentively weighed the remedies recommended in those reports to your Lordship's consideration, for the future regulation of the consular offices, and we are of opinion, upon a review of the whole subject, that the detailed suggestions of Mr. Consul-General Cartwright, coupled with those of Mr. Consul Brant, of Smyrna, and of Mr. Vice-Consul Brant, of Trebisond, are, with modifications, well adapted for practice in the Levant, where the duties of Consuls are so widely different from those in any other country. In framing new regulations, this marked difference should constantly be borne in mind by jurisconsults. In all European states, British subjects are amenable to the laws of the country where they reside, and the jurisdiction of Consuls is extremely limited. But in the Ottoman dominions, British subjects are not amenable to the local government; they are placed by treaty under the British Consuls, in criminal as well as civil cases. Hence the anomalous and arduous duties of Consuls in the Levant, who are called on to exercise the functions of police magistrates and of judges, as well as being the protectors of the persons, the commerce, and shipping interests of His Majesty's subjects.

It is quite obvious that British law is totally inapplicable to the local circumstances of Turkey; but any modification that may be advisable, will be preferable to being subject to Turkish law; and all who reside in the Levant, though tenacious of the valuable privileges conceded by the Porte, are sensible of the necessity of a peculiar code of regulations for the government of His Majesty's subjects within the Ottoman dominions.

In reference to Mr. Consul Brant's suggestions, we beg leave to offer a few remarks:—

We are of opinion that it will tend to prevent much unnecessary litigation, if the Consul has power to decide, without appeal, all differences submitted to him under the value of £100—(one hundred pounds sterling.)

That in cases of bankruptcy, the value of personal effects to be retained by the bankrupt should be £20, instead of £5 sterling.

That no debtor shall be imprisoned for a less sum than £5 sterling.

That the power to imprison, in case of misdemeanor, should, in aggravated cases, extend beyond the period of three months.

That in criminal cases, we are also of opinion that the power of the Consul is too limited, and according to the present practice, great criminals may too easily escape punishment, the Consul's authority not extending beyond the infliction of imprisonment.

The sending of criminals to Malta for trial, has been shown to be useless (as the law now exists) in consequence of the difficulty of complying with the law there, *vivâ voce* evidence being alone received; and the courts may not feel themselves competent to take cognizance of offences committed in Turkey; but these obstacles are not insuperable.

In any alterations which His Majesty Government may intend to adopt with regard to the courts of Malta, we most respectfully offer to your Lordship's consideration, whether some regulation may not be made to meet the existing difficulty, as respects the trial of persons guilty of criminal acts in Turkey, which are beyond the authority of Consuls to punish. The suggestions of Lieutenant-Colonel Campbell, His Majesty's Agent and Consul-General in Egypt, appear entitled, on this point, to great weight.

We submit to your Lordship, that when *vivâ voce* evidence cannot be forwarded to Malta, that the Consul should be empowered to summon four or six respectable persons, to assist him in taking evidence, both for and against the prisoner, in his presence, which evidence to be on oath, and verified by the Consul and his assistants.

Acting in a measure like the grand jury here, they will determine as to the case being or not being of a nature to be tried by a higher tribunal; and in the event of their considering the party to be guilty, the proceedings, verified by the Consul, &c., as before stated, to accompany the prisoner to Malta, and be received by the courts as evidence; not, however, to the exclusion of any *vivâ voce* evidence which may subsequently be obtained. A clause enjoining ships of war bound to Malta to receive such criminals on board, to be delivered to the proper authorities in that island, would be highly expedient; and in default of such conveyances, the Consuls should possess the power of sending criminals by merchant vessels, on payment of a proper consideration.

The privilege which British subjects enjoy in Turkey, of being tried by their own Consuls, is too valuable in any case to forego; for once relinquished, it will not easily be recovered; and to deliver over any prisoner to the Turks, would be at once to determine his fate.

We have the honour, &c.,

(Signed) S. BRIGGS.
N. WM. KERR.
WM. MALTASS.
WM. TOMLINSON.
JN. NICKOLS.
J. W. BODDINGTON.

Viscount Palmerston, G.C.B.